IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 6408 of 2001

Between:

Sri Mallela Venkateswarlu S/o.M.Nagaiah
r/o.9/62,7th Ward Behind Subbarao Hospital
Piduguralla Guntur Dist.

..... PETITIONER

AND

1 The State of A.P Rep.by its Secretary (Mines)
Secretariat Hyderabad
2 The Director of Mines & Geology 8th Floor,BRKR Buildings
Tank Bund Road Hyderabad.
3 The Dy.Director of Mines & Geology Guntur Region
R/o.D.No.4-5-67/36,1st lane Shantinagar,Ring Road
Koritepadu Guntur.
4 The Asst.Director of Mines & Geology Guntur Region
R/o.D.No.4-5-67/36,1st lane Shantinagar,Ring Road
Koritepadu Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other writ,order or direction declaring G.O.Ms.No.148, Industries and Commerce (Mines-I) Dept, dated 11-5-98 as illegal, arbitrary, contrary to section 15(3) of the M.M.(D&R) Act, 1957 and consequently direct the respondents to refund the amounts collected during the currency of the impugned G.O.during the lease period along with 24% interest per annum including Rs.78,400 collected in excess by the respondents towards transport of 11200 Tons of Mineral before the Impugned G.O came into effect and pass such other order or orders.

Counsel for the Petitioner:MR.PANNALA.SRINIVAS

Counsel for the Respondent No.: GP FOR INDUSTRIES & COMMERCE

The Court made the following :

O R D E R:

The Writ Petition is filed by the petitioner challenging the vires of G.O.Ms.No.148 Industries and Commerce (Mines-I) Department dated
11-5-1998, increasing the rate of royalty from Rs.25/- to Rs.32/- per tonne for Lime Stone used as Minor Mineral as illegal, arbitrary and violative to the provisions of the Mines and Minerals (Development & Regulation) Act, 1957 (for short 'the Act') and Article 14 of the Constitution of India.

The brief facts of the case of the petitioner are that the 3rd respondent has granted a quarry lease to the petitioner for a period of ten years vide proceedings No.917/Q/96, dated 10-04-1996, for extraction of Limestone (Minor & Mineral) in an extent of Ac.1.26 cents in Survey No.718/B of Pillutla village, Machavaram Mandal, Guntur District. Thereafter the petitioner executed a lease deed in Form-G which is valid from 12-04-1996 to 11-04-2006, before the 4th respondent, who in turn issued work order proceedings No.841/Q/96 dated 12-04-1996 to him. At the time of execution of the lease deed, the rent for the said Lime Stone as Minor Mineral was fixed as Rs.10,000/- per Hectare per annum and the Seigniorage Fee was at Rs.10/- per ton of Lime Stone. In accordance with the amendments made in G.O.Ms.No.238, Industries and Commerce (Mines-I) Department, dated 09-07-1992, which came into effect from
15-07-1992, to the A.P.Minor Mineral Concession Rules, 1966, (for short
'the rules') the seigniorage fee was levied. In accordance with the another amendment brought into effect from 08-08-1996, to the rules, by G.O.Ms.No.154 Industries and Commerce (Mines-I) Department dated
23-07-1996, the seigniorage fee has been increased to Rs.25/- per tonne from Rs.10/- per tonne and the dead rent was also increased from Rs.10,000/- to Rs.15,000/- per annum. While so, by the impugned G.O.Ms.No.148 Industries & Commerce (Mines-I) Department dated

11-05-1998, the 1st respondent increased the seigniorage fee from Rs.25/- per tonne to Rs.32/- per tonne. The grievance of the petitioner is that within a span of three years the increase of seigniorage fee by the 1st respondent by virtue of the impugned G.O.148 dated 11-05-1998 as illegal, arbitrary and contrary to Section 15(3) of the Act.

A counter affidavit filed stating that according to the provisions of Section 15(3) of the Act, the State Government is having powers to enhance the seigniorage fee for more than once within a span of three years. An additional Counter affidavit filed by the Joint

Director on behalf of the respondents, wherein it is stated that on reconciliation of the revenue receipts from October 2000 to January 2002, it was noticed that the challans submitted by the petitioner are fake to an extent of
Rs. Rs.16,80,000.00 for the quantity of Limestone of 41,800 MT for which the petitioner had obtained dispatch permits. That a complaint was lodged on 01-03-2002 before the Station House Officer, Pattabhipuram police station. Thereafter, a show cause notice has been issued to the petitioner on 19-03-2002 by the 3rd respondent offering his explanation for the said mischief. Since the reply submitted by the petitioner is not convincing, the 4th respondent has recommended for determintion of the quarry held by the petitioner vide letter No.841/Q/96, dated 06-09-2002. Accordingly, the 3rd respondent determined the quarry lease held by the petitioner vide determination proceedings.No.917/Q1/96,
dated 15-04-2003. Aggrieved by the same, the petitioner filed an appeal before the 2nd respondent on 27-08-2003, however, the same was dismissed. Further, the petitioner filed a revision application before the 1st respondent, wherein, the determination proceedings dated 15-04-2003 and 05-11-2003, kept in abeyance, in view of the fact that the police seized the matter and nearly Rs.57,00,000/- to be recovered to await the outcome of the case pending before the police.

Heard both sides.

The learned counsel for the petitioner submitted that the Government has no power to enhance of rates twice in a given period of four years and the same is hit by the provisions of Section 15 (3) of the Act which clearly specify that rates shall not be enhanced for more than once during any period of three years.

Section 15(3) of the Act, reads as under:

> "The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty (or dead rent whichever is more) in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals.
>
> Provided that the State Government shall not enhance the rate of royalty (or dead rent) in respect of any minor mineral for more than once during any period of three years."

Section 15(3) of the Act clearly prescribe that the State Government shall not enhance the rate of royalty (or dead rent) in respect of any minor mineral for more than once during any period of three years, the G.O.Ms.No.148 Industries and Commerce

Department dated 11-05-1998 enhancing the royalty substituting the schedule (1) under Rule-10 is not justified and the same is set aside. However, since the investigation with regard to fake challans is not yet completed, no direction can be given with regard to refund of the amount. It is needless to mention that such recovery shall abide by the result of the investigation.

Subject to above observations, the writ petition is partly allowed. No costs.

07-07-2004.

mjl/*

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Wednesday, the seventh day of July, Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary (Mines) Govt. of A.P. Secretariat Hyderabad

2. The Director of Mines & Geology 8th Floor,BRKR Buildings
Tank Bund Road Hyderabad.

3. The Dy.Director of Mines & Geology Guntur Region
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5. 2 CCs to G.P. for Industries & Commerce, High Court of A.P.Hyd.

6. 2 CD copies.